

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
Complainant,
v.
USA GLOBAL LINK, INC.,
Defendant.
File No. E-95-33

MEMORANDUM OPINION AND ORDER ON REVIEW

Adopted: March 22, 2000; Released: March 29, 2000

By the Commission: Commissioner Furchtgott-Roth issuing a separate statement.

I. INTRODUCTION

1. In this Order, we deny an Application for Review (Application for Review) filed by USA Global Link, Inc. (Global Link) concerning the lawfulness of providing call-back access to customers located in the Philippines. Global Link asks us to reverse the Memorandum Opinion and Order issued by the Common Carrier Bureau (Bureau), in which the Bureau granted a complaint filed against Global Link by the Philippine Long Distance Telephone Company (PLDT). The Bureau found that Global Link violated Commission orders by using the uncompleted call signalling configuration of call-back to provide international service to customers in the Philippines, where the use of call-back is unlawful. For the reasons discussed below, we deny Global Link's Application for Review.

1 Global Link is an international long distance carrier, and its principal place of business is 50 North Third Street, Fairfield, Iowa 52556.

2 Philippine Long Distance Tel. Co. v. USA Global Link, Inc., 12 FCC Rcd 12010 (Com. Car. Bur. 1997) (Global Link Order).

3 PLDT is a private corporation that provides domestic and international telecommunications facilities and services in the Philippines, and is located at Ramon Cojuangco Building, Makati Avenue, Makati City, Philippines.

4 We also deny Global Link's Application for Review (Ex Parte Application for Review) of the Bureau's decision denying Global Link's Request to Permit Ex Parte Presentations in this proceeding. Philippine Long Distance Tel. Co. v. USA Global Link, Inc., 12 FCC Rcd 22039 (Com. Car. Bur. 1997). We note that a section 208

II. BACKGROUND

A. The Call-Back Proceeding

2. "Call-back" is a technology used to provide international telecommunications service from a foreign country through a U.S. switch.⁵ In the *Call-Back Proceeding*,⁶ the Commission stated generally that the use of call-back utilizing uncompleted call signalling was consistent with its policy favoring resale of international switched service.⁷ The Commission concluded that call-back "advances the public interest, convenience, and necessity by promoting competition in international markets and driving down international phone rates, [and that it] is in the best interests of consumers--and eventually of economic growth--around the world."⁸

3. Notwithstanding this procompetitive policy, the Commission required U.S. carriers to provide call-back service "in a manner that is consistent with the laws of countries in which they operate."⁹ The Commission reaffirmed this requirement in its *Reconsideration*

complaint proceeding is treated as a restricted proceeding from the day on which the matter is filed with the Commission. See 47 C.F.R. §§ 1.1208. The Bureau hardly exceeded its discretion in complying with the rule. Furthermore, our decision denying Global Link's Application for Review effectively renders moot Global Link's *Ex Parte* Application for Review.

⁵ See *Global Link Order*, 12 FCC Rcd at 12011. Although several configurations of call-back are currently in use, "uncompleted call signalling" is the only configuration that was at issue in the complaint proceeding. To use uncompleted call signalling call-back, a foreign customer calls a telephone number specified by the call-back provider and hangs up after a certain number of rings. The reseller's switch then places an outbound call to the foreign customer and provides the customer a U.S. dial tone that can be used to complete calls to the United States or elsewhere. The resulting call is placed at U.S.-tariffed rates, which are generally lower than those of the originating country. For the purpose of this proceeding, the term "call-back" will refer solely to the uncompleted call signalling configuration of call-back technology.

⁶ *VIA USA, Ltd., Telegroup, Inc., Discount Call Int'l Co.*, 9 FCC Rcd 2288 (1994) (*Call-Back Order*), *aff'd on reconsideration*, 10 FCC Rcd 9540 (1995) (*Call-Back Reconsideration*) (together *Call-Back Proceeding*). We note that the Commission currently has before it a petition for rulemaking requesting that the Commission reverse its comity-based policy articulated in the *Call-Back Proceeding*. Petition for Rulemaking of the Telecommunications Resellers Association to Eliminate Comity-Based Enforcement of Other Nation's Prohibitions Against the Uncompleted Call Signalling Configuration of International Call-Back Service, RM-9249 (filed Mar. 19, 1998).

⁷ *Call-Back Reconsideration*, 10 FCC Rcd at 9541.

⁸ *Id.*; see also *Call-Back Order*, 9 FCC Rcd at 2290.

⁹ *Call-Back Order*, 9 FCC Rcd at 2292.

Order, stating that "U.S.-based carriers may not offer international call-back using uncompleted call signalling in countries that have specifically prohibited this practice."¹⁰ Subsequently, the Commission found a carrier to have violated the requirements of the *Call Back Proceeding* by offering international call-back services in the Philippines.¹¹

B. The PLDT Complaint

4. On July 5, 1995, PLDT filed a complaint with the Commission alleging, *inter alia*, that Global Link violated the Commission's requirements in the *Call-Back Proceeding* by offering international common carrier service using call-back to customers in the Philippines, a country that prohibited such service. In the *Global Link Order*, the Bureau reached the following conclusions: (1) pursuant to section 208 of the Communications Act of 1934, as amended (the Act), PLDT had standing to file its complaint against Global Link;¹² (2) Global Link was acting as a common carrier in its provision of service to the Philippines and was, therefore, subject to Commission regulation;¹³ (3) PLDT made a sufficient showing under the criteria set out in the *Call-Back Proceeding* that the Philippine government had declared the use of call-back in its country to be unlawful;¹⁴ and (4) Global Link violated the requirements of the Commission's *Call-Back Proceeding* and section 214 of the Act.¹⁵ Based on its conclusions, the Bureau directed Global Link to terminate its service to the Philippines to the extent that it used the uncompleted call signalling configuration of call-back.¹⁶

III. DISCUSSION

5. In its Application for Review, Global Link argues that the Bureau erred in granting PLDT's complaint in the *Global Link Order*. Global Link asserts that the Bureau failed to apply certain procedures specified in the *Call-Back Reconsideration* relating to the manner in which the Commission may assist a foreign government in enforcing that country's prohibition

¹⁰ *Call-Back Reconsideration*, 10 FCC Rcd at 9540-41, 9557-59.

¹¹ *Philippine Long Distance Tel. Co. v. Int'l Telecom, Ltd., d/b/a/ Kallback Direct*, 12 FCC Rcd 15001 (1997) (*ITL Order*).

¹² *Global Link Order*, 12 FCC Rcd at 12012-14

¹³ *Id.* at 12014-18.

¹⁴ *Id.* at 12018-19.

¹⁵ *Id.* at 12019-21.

¹⁶ *Id.* at 12021-22.

against call-back. Global Link contends that the Bureau departed from Commission precedent and policy and failed to explain adequately its reasons for doing so.¹⁷ Finally, Global Link contends that the Philippine government has not prohibited call-back using uncompleted call signalling.¹⁸ We address these arguments below. We note at the outset, however, that some of Global Link's arguments ultimately question the wisdom of the Commission's policy on international call-back. In resolving this formal complaint proceeding, we apply existing Commission rules and orders, and our decision here has no bearing on our evaluation of whether to modify these policies in the future.

A. International Comity and Call-Back

6. We reject Global Link's assertion that the Bureau incorrectly accorded to a foreign private interest rights properly accorded only to foreign governments.¹⁹ Global Link correctly states that the *Call-Back Reconsideration* outlines procedures that foreign governments must follow before enlisting the Commission's aid in enforcing restrictions on call-back. Global Link contends that the omission of any discussion of private parties in connection with those procedures indicated that the Commission did not intend to apply the principles of comity to non-governmental parties.

7. In the *Call-Back Proceeding*, the Commission made two distinct rulings: (1) U.S. carriers may not provide service using call-back to countries where call-back was clearly prohibited,²⁰ and, (2) foreign governments may obtain the Commission's assistance in enforcing their prohibition against call-back by following certain procedures.²¹ The *Call-Back Proceeding* does not, however, preclude a nongovernmental entity from filing an individual complaint under section 208 of the Act. The Bureau correctly determined that PLDT's complaint was properly filed pursuant to section 208 of the Act. It was filed by a "person"²² against a carrier (Global Link) for actions that would constitute a violation of the Act, a Commission order, or a Commission rule. The procedures described in the *Call-Back Proceeding* do not preclude the otherwise proper filing of a section 208 complaint by a private party.

¹⁷ *Id.* at 7-13.

¹⁸ *Id.* at 13-17.

¹⁹ Application for Review at 7.

²⁰ *Call-Back Reconsideration*, 10 FCC Rcd at 9557-58.

²¹ *Id.*

²² The term "person" includes an individual, partnership, association, joint-stock company, trust or corporation, 47 U.S.C. § 153(32), and is broadly interpreted to include "any member of the public" when filing complaints against common carriers. *See Global Link Order*, 12 FCC Rcd at 12013 n.21.

B. Procedural Requirements of the Call-Back Proceeding

8. We also reject Global Link's contention that the Bureau abandoned the procedural requirements established by the Commission in the *Call-Back Proceeding* by not applying them to PLDT, a nongovernmental entity.²³ The Bureau did not abandon the Commission's "sensible policy"²⁴ of requiring foreign governments to follow certain procedures in seeking the Commission's assistance. Indeed, the Bureau acknowledged the value of these procedures.²⁵ The instant proceeding, however, is not a matter of mutual cooperation between governments, but rather a dispute between private parties. Furthermore, the Commission previously held in the *ITL Order* that PLDT was not required to follow the procedures set forth in the *Call-Back Proceeding* for foreign governments seeking U.S. law enforcement assistance.²⁶ We conclude, therefore, that the Bureau did not err by making the same determination here.

C. Call-Back Using Uncompleted Call Signalling Is Prohibited In The Philippines

9. The Commission determined in the *ITL Order*²⁷ that PLDT had provided a sufficient showing under the criteria established in the *Call-Back Proceeding* that the government of the Philippines had prohibited call-back in that country. Based upon the same evidence the Commission considered in the *ITL Proceeding*,²⁸ we find that the Bureau correctly reached the same conclusion in the instant case.²⁹

IV. CONCLUSION and ORDERING CLAUSES

10. For the reasons discussed above, we conclude that the Bureau did not err in its findings that Global Link violated the requirements of the *Call-Back Proceeding*.³⁰ We therefore deny Global Link's Application for Review.

²³ *Id.* at 10-13.

²⁴ Application for Review at 9.

²⁵ *Global Link Order*, 12 FCC Rcd at 12020.

²⁶ *ITL Order*, 12 FCC Rcd at 15012.

²⁷ *ITL Order*, 12 FCC Rcd at 15011-12.

²⁸ *Compare ITL Order*, 12 FCC Rcd at 15011-12 with *Global Link Order*, 12 FCC Rcd at 12019.

²⁹ *Id.* at 15012a.

³⁰ 47 U.S.C. § 214.

11. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 208, and 405 of the Act, 47 U.S.C. §§ 151, 154(i), 154(j), 208, 405, that the Application for Review filed by Global Link on September 12, 1997, IS DENIED.

12. IT IS FURTHER ORDERED that the Application for Review of *Ex Parte* Determination filed by Global Link on January 12, 1998, IS DENIED.

13. IT IS FURTHER ORDERED that the Motion for Consolidation filed by Global Link on November 19, 1997, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Philippine Long Distance Company v. International Telecom, Ltd., File No. E-95-29, Philippine Long Distance Company v. USA Global Link, Inc., File No. E-95-33.

I have no qualms with the bottom lines reached in these two orders. In fact, I believe that generally enforcement decisions should apply the law as they find it. Here, we have held that “U.S. carriers may not offer international call-back using uncompleted call signalling in countries that have specifically prohibited this practice.”³¹ Therefore I believe it is proper to apply that standard to Global Link and International Telecom.

Nonetheless, I want to emphasize that today’s decisions in no way reflect my endorsement of our current international call-back policies. I am increasingly troubled by the idea that a foreign government can limit the otherwise lawful operations of U.S. carriers. Despite the Commission’s conclusion that international call-back services are pro-competitive and strengthen the marketplace, our current policy allows a foreign government (often also the owner of the foreign monopoly carrier) to snuff out these competitive services. In light of these doubts and the pending rulemaking on this issue, I write separately to clarify the limited nature of today’s decisions.

³¹ See VIA USA Ltd., Telegroup Inc., Discount Call International Co. 9 FCC Rcd 2288 (1994) *aff’d on reconsideration*, 10 FCC Rcd 9540, 9557-59 (1995).